

Attorney Docket No.: T7069(C)
Serial No.: 10/067,537
Filed: February 7, 2002
Confirmation No.: 7836

REMARKS

Amendments to the Claims

The present amendment is submitted in an earnest effort to advance the case to issue.

Claim 1 has been amended without prejudice to recite preferred embodiments of applicants' invention that are more clearly differentiated from the prior art. Specifically:

- the preamble now specifies that the system is used for the electronic ordering of supermarket goods as disclosed on page 16, lines 18-20:

- the description of the order prediction means (C1) now specifies that its output is a suggested shopping list as opposed to an "order" (disclosed on page 4, line 9),

Amended claim 7 specifies that the suggested shopping list recited in amended claim 1 includes 10 to 100 different products and/or wherein more than 50% of goods in the order have previously been purchased one or more times in a 12 month period (disclosed on page 15, line 22 to page 16, line 33).

Claims 2, 12, 14 and 15 have been canceled without prejudice.

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New claim 17 specifies that the suggested shopping list recited in claim 1 includes 5 different products and more than 25% of goods in the order have previously been purchased one or more times in a 12 month period.

New claim 18 specifies that the suggested shopping list recited in claim 1 includes 10 to 100 different products and more than 50% of goods in the order have previously been purchased one or more times in a 12 month period.

Claim Rejection 35 USC §112

Claims 2, 12, 14 and 15 were rejected under 35 USC §112 second paragraph as being indefinite. These claims have been cancelled without prejudice rendering the 112 rejection moot.

Claims Rejection 35 USC §103(a)

Claims 1-3, 7, 8, 11, and 15 were rejected under 35 USC §103(a) as being unpatentable over Herz (US 2001/0014868). Applicants respectfully request that the Examiner reconsiders this rejection in light of the above amendments and the following remarks.

Herz discloses a system for the automatic determination of customized prices and promotions that automatically constructs product offers tailored to individual shoppers, or types of shopper, in a way that attempts to maximize the vendor's profits.

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The Herz system pitches offers (i.e., deals) to consumers, e.g., "buy a new set of skis and get a lift ticket at a ski resort", from a collection of offers stored in a database. The orders or deal are constructed so as to maximize the vendors profits and the specific offers to be pitched are matched to the consumer based on previous offers the particular consumer has accepted and/or the buying patterns of consumers with similar demographics.

In contrast, applicants' invention is specifically directed to a system for the electronic ordering of supermarket goods which involve frequent purchases at the same stores of multiple products many of which are repetitively purchased. Put another way the system disclosed by Herz is about offering "buying opportunities" while applicants' system is designed to "fill a shopping bag".

There are a number of features of Claim 1 of the invention which Herz does not disclose. Among these are:

(a1) first electronic storage means comprising information concerning goods which are available for ordering, their prices and optionally further information relating to said goods;

In the context of applicants invention the term "goods available for ordering" essentially at least encompass the inventory of goods and services provided by the supermarket, i.e., substantially all currently available products and services. The Examiner asserted (a1) is disclosed by Herz citing Fig 1, 0022, and 0024. However,

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Element **121** is an “Offer Database”, i.e., a database composed of a collection of deals that potentially could be offered to the consumer. This is quite different from a database of goods and services available for purchase at the supermarket.

(a4) fourth electronic storage means comprising environmental information;

Page 8, lines 4 to 18 of applicants' specification describe the environmental information stored as including weather conditions, special occasions such as sporting events, television shows, and special activities, consumer trends and health conditions (e.g., “this week 85% of families have at least one person with flu”).

The Examiner asserted this element was disclosed by Herz in 0010, 0037 and 0247. However, these paragraphs deal with generalizations extracted from market research data which are used to construct offers. Herz at 00010 states “For example, a data analysis might show that ski vacations tend to be purchased around the same time as ski clothes. This motivates a joint promotion: buy the vacation, and get a discount on the ski cap. Such promotions could potentially be offered automatically.” This example in no way represents the type of information stored in (a1) constituting “environmental information” in the sense used by applicants', i.e., what relevant things are going on in the world at the time that the consumer is placing a supermarket order.

(b1) electronic interaction means for said one or more clients to add background information to storage means;

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At page 8, lines 20 to 32 of the specification, background information added at (b1) is identified as information such as "I have joined a sports-club", "I have quit smoking", "I will be on holiday for the next three weeks", "I will have 4 visitors this weekend", "I have a birthday party next week", or "I want a quick meal today". The specification states that this electronic means is preferably used prior to placing an order such that the suggested shopping list can take into account the changes in background information.

The Examiner relied on the examples offered in paragraphs 122, 123 and 124 of Herz to show that background information is added by the client. However, Herz only mentions that this information is stored, not that it is obtained through an electronic client interaction means. At paragraphs 31 and 32, Herz states that some information is solicited from the shopper upon registration with the service, and that other information is obtained from, e.g., consumer databases. Further, the sort of background information added with (b1) as construed from applicants' specification could not be obtained on registration or from a consumer database but rather is entered on the spot using an electronic interaction means. No mention is made by Herz of an electronic interaction means used to enter the type of background information in the sense construed in applicants' specification.

(c1) order prediction means employing a calculation method suitable for predicting orders involving repeat purchase of multiple goods, electronically produces a suggestion for a shopping list wherein the suggested shopping list includes a predicted list of goods which have been previously purchased by the

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client and are likely to be purchased again based on previous shopping behavior and a suggested list of goods that may be attractive for purchase;

The output of (C1) is a shopping list as construed by the specification which includes a prediction of the supermarket goods and services the consumer will require at that particular moment and suggestions for additional products and services based on the consumers profile, the stored environmental factors and recent inputs of background information made by the consumer. Such a shopping list will typically contain at least 5 different products and/or at least ¼ of the suggested goods have been previously purchased within the past year.

The Examiner relied on 0299, 0003, 0020, 0237, and 0247 to demonstrate that these elements were disclosed by Herz. However, the output of the Herz system is the presentation of one or more "offers", i.e., deals. "Offers" in the sense used by Herz is not a suggested shopping list in the sense used by applicants. The latter encompasses a prediction of the all supermarket goods and services that the consumer will require at that shopping excursion. In fact, Herz specifically states at the end of 0299 that:

"An obvious proviso for such an approach [predicting when a consumer is ready to repurchase a large bag of dog food and using this information to construct offers] is that some customers might only go shopping once a month, causing all standard purchases to have a monthly periodicity - this needs to be taken into consideration, and we might want to only pay attention to cycles that happen at a lower frequency than that of a customer's shopping trips. "

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Applicants' submit that the system taught by Herz exclusively addresses the problem of presenting consumers with persuasive offers that maximize vendor profits. This is a completely different problem than is addressed by applicants system, namely presenting consumers with a suggested supermarket shopping list that is meant to at least take care of all their supermarket needs regardless of their shopping frequency. Absent a disclosure of elements (a1), (a4), (b1) and (c1) as these terms are construed in applicants' specification, Herz does not present a *prima facie* case of obviousness over amended claims 1-3, 7, 8, 11, and 15.

New claim17 and 18 are even more removed from Herz as both claims require that the suggested order has greater than 5 multiple products and greater than ¼ of the products have been purchased at least once in the past year conditions not suggested explicitly or implicitly by Herz.

Claims 5, 12 and 13 were rejected under 35 USC §103(a) as being unpatentable over Herz (US 2001/0014868) in view of Pyo (US 6,636,836). Applicants respectfully request that the Examiner reconsiders this rejection in light of the above amendments and the following remarks.

Herz was already discussed.

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Pyo was relied upon for the disclose of a system of software components providing a variety of analyzing methods to achieve better predictive results. Pyo further teaches rule-based, regression, collaborative filtering, content filtering, neuron network theory and statistical methods.

Pyo is silent about genetic algorithms; decision tree models; and fuzzy logic.

Pyo is also silent about the use of survival analysis as specified in claim 16 of the application .

Since claim 12 and 13 stand cancelled without prejudice, only claims 5 and 16 are considered.

Regarding claim 5, since the combination of Herz and Pyo does not disclose at least the elements (a1), (a4), (b1) and (c1) recited in amended claim 1 as these terms are construed in applicants' specification, the combination of references do not present a *prima facie* case of obviousness over claim 5 which depends from claim 1.

Regarding claim 16, this claim is even further removed from the combination of Herz and Pyo because both references are silent regarding the use of survival analysis in the prediction means (c1) of claim 1.

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In light of the above amendments and remarks, applicants respectfully request that the 103 (a) rejections be reconsidered and withdrawn and that the application be allowed to issue.

If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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